TESTIMONY OF RAY WAGNER

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BEFORE THE

SENATE COMMERCE, SCIENCE, AND TRANSPORTATION'S

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE, AND TOURISM

HEARING ON

"MOTOR VEHICLE RENTAL FAIRNESS ACT OF 1999" -- S. 1130

September 30, 1999

Good morning, Mr. Chairman and Members of the Committee. My name is Ray Wagner and I am a Vice President at Enterprise Rent-A-Car Company. Enterprise is a family-owned corporation headquartered in St. Louis, Missouri. I appear before you on behalf of Enterprise to express our support for Senator McCain's "Motor Vehicle Rental Fairness Act of 1999" (S. 1130). Thank you, Mr. Chairman, for inviting me to present testimony this morning and for your continued strong support for vicarious liability reform legislation.

I view the current vicarious liability laws from perhaps a unique perspective. Not only am I a vice president at Enterprise, I am also a municipal circuit court judge in St. Louis County and an adjunct professor at the Washington University School of Law in St. Louis. And I am here to say that the current vicarious liability laws are unfair and badly in need of reform.

The title of the legislation under consideration today accurately describes the impact this bill will have when it is enacted. S. 1130 will return the notion of fairness to litigation involving car rental companies in a handful of states that still cling to the unfair doctrine of vicarious liability for companies that rent or lease motor vehicles.

It is not fair to subject car rental companies to unlimited liability for the acts of their renters. And yet that is exactly what the vicarious liability laws in the states of Connecticut, Iowa, Maine, New York, Rhode Island, and the District of Columbia impose on Enterprise and other companies.

It is not fair to impose multi-million dollar judgments on any entity, whether an individual or a corporation, when they have done nothing wrong. Again, that is exactly what the vicarious liability laws of these states do.

It is not fair to force car rental customers across the nation to pay through higher car rental rates for the misguided and outdated vicarious liability laws that exist in only a handful of states. But that is exactly what happens every day, as the laws of these states force car rental companies to charge renters outside of these states higher rates to cover their losses in these vicarious liability states.

It is not fair to deprive consumers the competition and lower rental rates that smaller car rental companies can offer. But that is what has happened because vicarious liability laws have forced many companies out of business.

And it is not fair that the only sure way a car rental company, even one operating outside of vicarious liability states, can protect itself against vicarious liability claims is to go out of business. But that is the only way that a car rental company can make sure it avoids such claims.

S. 1130 will return uniformity and fairness to the car rental industry and to the customers who rent our cars. Quite simply, it will pre-empt the laws in a small minority of states that hold companies that rent or lease motor vehicles liable for the negligence of their customers only because the company owns the vehicle involved in the accident.

Opponents of this legislation will raise three central arguments as to why S. 1130 should not become law. I would like to respond to each argument in turn.

First, opponents will argue that Congress should not pre-empt state laws as a matter of states' rights and federalism. I would agree with this argument if the impact of these states' vicarious liability laws was confined to their borders and their citizens. But, this is not the case. Car rental customers across the nation pay for the vicarious liability losses incurred by car rental companies through higher rates. A car rental company operating in Virginia cannot stop its vehicles from traveling to New York or the District of Columbia. And, as the selection of cases attached to my testimony outlines, creative plaintiffs' lawyers will seek to apply one of these states' vicarious liability laws no matter where an accident occurs.

Second, opponents of S. 1130 will argue that the bill will somehow lower the standard of care car rental companies will use in the future in renting their vehicles. They allege that we will feel free to rent to drunk customers or to not maintain our vehicles in peak condition because we will have no fear of liability. These arguments are pure bunk and they know it. S. 1130 expressly states that the

bill will not impact claims alleging a company's negligence, either by negligently entrusting the car to a person or by failing to maintain the car. If Enterprise, for example, has been negligent in any way, S. 1130 does not shield the company from potential liability for an accident. Nor should it.

Third, opponents of S. 1130 will argue that innocent, injured persons will go uncompensated if these states' vicarious liability laws are not preserved. It is indeed true that persons are injured every day in motor vehicle accidents and that financial resources, either through insurance or personal wealth, are in many cases insufficient to compensate these persons. But it also is true that our nation's liability system is based on fault. If a person is not at fault for an accident, then he or she should not be held liable. Compounding a wrong -- the original accident -- by adding another injustice -- holding the car rental company liable -- does not make the original wrong right.

My company has been subject to numerous vicarious liability judgments and settlements over the past ten years. These vicarious liability judgments have cost Enterprise tens of millions of dollars -- costs that we must pass through to our customers. Together, vicarious liability results in losses by car rental companies of over $100 million every year, exclusive of insurance costs and legal fees.

In sum, Mr. Chairman, S. 1130 will right an ongoing wrong -- holding a car rental company liable for the negligent actions of their renters. Vicarious liability impacts on interstate commerce through higher rental rates for all consumers, not just those in vicarious jurisdictions. Vicarious liability lessens competition in vicarious states by acting as a barrier to entry into business in the vicarious states. And vicarious liability undermines the fundamental principle of our nation's liability system -- that a person should pay damages for harm caused only when he or she is at fault or could have prevented the harm in some way. Federal vicarious liability reform is appropriate and long overdue.

Thank you for inviting me to present this testimony today. I urge this Committee to pass this bill so that it can be enacted into law by the end of this year.

I would be pleased to answer any questions my testimony may have raised.

SELECTED EXAMPLES OF VICARIOUS LIABILITY

CASES AGAINST CAR RENTAL COMPANIES

Settlements and judgments from vicarious liability claims against car rental companies cost the industry over $100 million annually. Listed below are selected examples of cases involving vicarious liability and car rental companies.

Fu v. Fu, 733 A.2d 1133 (1999)

In 1993, two friends rented a car in New Jersey from Freedom River, Inc., a Philadelphia licensee of Budget Rent-A-Car Corporation. The rental agreement identified only the two renters as authorized drivers of the car. The car, while being driven by Defendant Hong Fu (the wife of one of the renters and an unauthorized driver under the rental contract), was involved in a single car accident in New York. Plaintiff Li Fu, the sister of the Defendant and the wife of the other renter, was seriously injured in the accident. An arbitrator applied New York law and found the defendant and Freedom River liable for $3.75 million. This judgment was affirmed by the New Jersey Supreme Court.

Brown v. National Car Rental System, Inc., 707 So.2d 394 (1998)

Renter, a Georgia resident, leased a car from the Georgia office of National. The car was registered in Florida. Renter, in violation of the rental agreement, loaned the car to a friend, also a Georgia resident, who drove the car to Florida. While the unauthorized driver was driving in Florida, he hit a car driven by the plaintiff, a Florida resident. The lawsuit was brought in Georgia, and yet Florida law was applied. On appeal, the court held that National was vicariously liable for plaintiff's injuries under Florida law. National settled the case for $70,000.

Brown v. Welcome Corporation t/a Thrifty Car Rental, Docket No. 10779/96, Supreme Court of New York for the County of Westchester (1997)

Welcome Corporation, a Thrifty licensee, rented a car to Scott Freeman in Norfolk, Virginia. Freeman was the only authorized driver under the rental contract. Freeman gave the car to an employee, Harrell Davis, to use for business. Frank Dibello, another employee of Freeman, took the car without the permission of either Freeman or Davis and drove it to New York, where he was involved in an accident with Plaintiff. Despite the tortured connection of this accident to Welcome, the company was found vicariously liable for the accident under New York law and settled the case for $75,000 plus over $100,000 in defense costs.

Larocca v. Budget Rent-A-Car Corporation, Docket No. 08632/95, Supreme Court of New York for the County of Suffolk (1995)

Budget rented a vehicle to Rosalba Larocca in New York. Larocca gave permission to her son, an unauthorized driver under the rental contract with a suspended New York driver's license, to drive the vehicle. The son lost control of the vehicle on the New Jersey turnpike in a one-car accident. Larocco was a passenger in the vehicle at the time of the accident and suffered injuries. Mother sued son for his negligence, and jury found Budget vicariously liable for the son's negligence under New York law. A jury returned a verdict of $450,000 against Budget.

McNamara v. Thrifty Canada, Ltd, Civil Action No. 98-CV-507, U.S. District Court, N.D.N.Y. (1999).

Thrifty rented the car to renter in Toronto. Renter was involved in an accident in New York in which the plaintiff, the driver of another car, was injured. The police report on the accident indicated that the renter was driving too fast for the prevailing conditions and following too close. After a three day jury trial, Thrifty was held vicariously liable under New York law and ordered to pay $1.1 million in damages to plaintiff.

Zafra v. National Car Rental, Inc., Docket No. 126728/95, Supreme Court of New York for the County of Westchester (1995).

In 1995, a 19-year-old, who was an unauthorized driver under the rental contract for a car rented in New York by her mother, was driving in Vermont. She turned around to tell her friends in the back seat to be quiet and the car veered off the road and rolled over. One of the passengers was injured and sued the driver and National. Despite the fact that the accident occurred in Vermont, New York law was applied. National settled the claim for $985,000. Of particular interest, National was insured for $1 million, but the insurance company denied the claim because the driver was underage, in violation of the insurance coverage. However, New York prohibits car rental companies from refusing to rent to anyone 18 years of age or older.

Clay et al. v. Alamo Rent-A-Car, Inc., 586 So.2d 394 (1991).

Four British sailors rented a car from Alamo in Fort Lauderdale to drive to Naples. While driving to Naples, the driver of the car fell asleep at the wheel. The car left the road and ended up in a canal. The driver and two passengers were killed; the fourth passenger was seriously injured. Alamo was found vicariously liable for the deaths and injuries due solely to the fact that it owned the vehicle. No negligence for the accident was attributed to Alamo. Alamo was ordered by a jury to pay the plaintiffs $7.7 million. The jury award was affirmed on appeal.

Nichols v. Value Rent-A-Car, Inc., Case No. 92-20889(21), Circuit Court of the 17th Judicial Circuit in and for Broward County (1992).

In a single vehicle accident, the driver of a passenger van rented from Value lost control of the van after braking on a freeway to avoid a slower moving vehicle. The van rolled over and plaintiff

Nichols, who was not wearing a seat belt, was thrown from the van. She sustained injuries to her hands and her head. At trial, Value was not found negligent for her injuries in any way, and yet the jury ordered Value to pay the plaintiff $2.2 million for her injuries.

Rodriques v. Dollar Rent A Car Systems, Inc., Case No. 94-10085 CA6, Circuit Court for the 11th Judicial Circuit in and for Dade County (1994).

Plaintiff was speeding in a Dollar rental car when another vehicle ran a stop sign, striking the rental car and causing it to overturn. The injured parties in the rental vehicle received $800,000 payments from the insurance company that covered the other vehicle. Plaintiffs sued Dollar based on the negligence of the driver of the rental car (she admitted to speeding at the time of the accident). The jury awarded total damages of $420,000 against Dollar based upon the negligence of the driver and Dollar's ownership of the vehicle.

Watson v. Budget Rent A Car Corporation, Case No. 91/055232, Orange County Circuit Court (1991).

Budget rented a van to a family in Florida. At the time of the accident, the mother of the family was driving the van. The mother lost control of the van in a single-vehicle accident. Her infant son (the plaintiff), who was not restrained in the van, was thrown from the van and suffered severe injuries. Based upon the infant's mother's negligence and Florida's vicarious liability doctrine, Budget settled the case for $490,000.

Stein v. Thrifty Rent-A-Car, Inc., Case No. 298-6936-TS, Supreme Court of New York for the County of Suffolk (1986).

The renter of a Thrifty car ran a stop sign and collided with Stein's car. Stein was thrown from the vehicle and killed. Stein's estate sued Thrifty based upon New York's vicarious liability statute. At the original trial, the jury found that Stein's death was caused by her failure to wear a seat belt and awarded no damages. In 1992, a New York appellate court reversed the original jury verdict and ordered a new trial on the issue of damages alone. The second trial resulted in a $1.25 million jury verdict against Thrifty.